

APPLICANTS:
Thomas and Mary Mottley

**REQUEST: Variance to permit a shed
within the required rear yard setback and
Forest Retention area**

HEARING DATE: July 19, 2006

**BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5543**

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Thomas Mottley

CO-APPLICANT: Mary Mottley

LOCATION: 2560 Flora Meadows Drive/Colvard Manor, Forest Hill
Tax Map: 33 / Grid: 2D / Parcel: 434 / Lot: 23
Third (3rd) Election District

ZONING: AG / Agricultural

REQUEST: A variance, pursuant to Section 267-26(C)(5)(b) of the Harford County Code to permit a shed to encroach into the 3 foot rear yard setback (0 feet setback proposed), and a variance pursuant, to Sections 267-30.14 and 267-26C(6), to permit an accessory structure within the recorded Forest Retention Area in the AG District.

TESTIMONY AND EVIDENCE OF RECORD:

Co-Applicant Thomas Mottley described the subject property as being 1.86 acres in size, improved by a 4 bedroom, 2 story single-family residence. The Applicants purchased the property in April of 2005.

Despite having a surface area of almost two acres, Mr. Mottley explained that approximately 1.5 acres of the property is within either a 100 foot conservation setback or a Forest Retention Area. This setback and the Forest Retention Area normally preclude the construction of any improvements therein. Mr. Mottley explained that because of these restrictions the remaining, buildable part of his property totals approximately .10 acre, located immediately around the existing home.

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Further restricting the area which can be improved is the existence of a septic reserve area and driveway to the northwestern part of the house. These improvements together with the lot restrictions combine to leave almost no available land for any additional improvements.

Mr. Mottley had previously located, without a permit, a 10 foot by 14 foot shed along the roughly southeastern corner of his property. The shed is located directly on the property line and backs up to an adjoining property which is wooded. The shed is not on a permanent foundation and is similar to many others throughout Harford County that are normally purchased off-site, and brought and delivered to the site on a truck bed.

Because of these various lot restrictions and improvements, Mr. Mottley explained that he cannot locate the shed anywhere but within one of the restricted areas of the property, and he believed that the present location would have the least impact on any adjoining property, or on his own property. Mr. Mottley is requesting a variance to allow the shed to be located in its present location, within the recorded Forest Retention Area. Mr. Mottley also proposes the shed be located immediately on the property line, which would require a 3 foot variance.

Next testified Mary Barthel, the neighbor immediately adjoining Applicants' property at the location of the shed. Ms. Barthel testified that while she is not particularly concerned about the location of the Applicants' shed, she was worried that other property owners, who also adjoin her property, would elect to put similar sheds or other improvements directly on her property line. She does not believe this would be an acceptable situation and is accordingly concerned about the precedent which the Applicants would set if they were allowed to continue to locate the shed on her lot line.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune stated that there are many other similar sheds located throughout Harford County. The Applicants' shed is not unusual. However, the Applicants' lot is unusual, according to Mr. McClune, in that it is subject to a 50 foot deep Forest Retention Area, and a 100 foot agricultural setback along two of its property lines.

Furthermore, according to Mr. McClune, the dwelling itself is pushed back somewhat from the front yard setback line and to the rear of the property due to the topography of the property. These extensive setbacks and the Forest Retention Area create only a very small area in which any improvement can be located without a variance. That location would be directly in front of and close to the house which, in Mr. McClune's opinion, would be undesirable and not attractive. Accordingly, Mr. McClune recommends the requested variances be granted.

Mr. Mottley, in response to Mrs. Barthel's testimony, agreed that the shed could be relocated 3 feet away from the property line. Moving the shed 3 feet away from the property line is possible, and would eliminate the need for the variance to the required 3 foot rear yard setback.

No other witnesses testified in opposition, nor was any evidence presented in opposition.

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APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A review of the location drawing of the Applicants' property shows that the lot is heavily impacted by a Forest Retention Area and a 100 foot agricultural setback easement which runs along two sides of the property. The house is also located somewhat to the rear of the property, with the driveway and septic reserve area directly in the front, between the front of the house and the front lot line.

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No doubt Mr. Mottley is correct when he states that the only available property on which any improvement could be erected without a variance consists of approximately one-tenth of an acre. Furthermore, a 10 foot by 14 foot storage shed similar to what the Applicants now have on their property would be unattractive and undesirable if located directly in the Applicants' front yard, close to their house, in the only available location.

It is accordingly found that because of these very significant constraints the subject property is unique. This uniqueness causes a practical difficulty in that the Applicants cannot locate a standard storage shed in any appropriate location on their property without a variance.

Furthermore, it is found that the location of the shed, to the southeast corner of the property next to the wood line and far removed from any adjoining house, has no adverse impact. The shed is of an attractive design, and would cause no adverse harm even if visible. However, the concerns of Mrs. Barthel are well taken. She fears that other property owners will be similarly motivated to locate sheds directly on her property line. It is possible that other property owners would not be as considerate as is Mr. Mottley. In response to Mrs. Barthel's concern, Mr. Mottley stated that the shed could be moved forward 3 feet off her property line which would eliminate the need for a variance to the 3 foot setback line.

CONCLUSION:

It is accordingly recommended that the variance to allow the location of the shed within the Forest Retention Area be approved. It is specifically found that the granting of this variance would not adversely affect water quality.

It is further recommended, based upon Mr. Mottley's offer to move the shed 3 feet off the property line, that the requested variance to the 3 foot setback line be denied. The Applicant shall obtain all necessary permits and inspections for the shed.

Date: August 30, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on SEPTEMBER 28, 2006.